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Federal Communications Commission
Office of the Secretary

May 24, 2005

Ms. Mary Hoberman
Director
International Public Policy
A T & T Wirelsss
16661 NE 72nd Way
RTC 5
Redmond WA 98052
USA

Dear Ms. Hoberman

I refer to your letter of May 19, 2005.

As you are no doubt aware, the Government of Jamaica assumed statutory responsibility for matters relating to Universal Service in 2000, when the liberalization of the telecommunications industry commenced. The incumbent Telecommunications Carrier was appointed the Universal Service Provider for a period of three years, which ended on March 1, 2003.

Since that time, this Ministry and the Office of Utilities Regulation ("OUR") have worked assiduously to conduct the necessary consultations and strategic planning, in order to ensure the efficient, transparent, and non-discriminatory implementation and administration of the national universal service plan.

The Government of Jamaica values greatly the amicable and mutually beneficial trading relationship which exists between our two countries. My recent visit to Washington to discuss matters relating to this very initiative is indicative of the national commitment to resolve differences through dialogue and cooperation. Jamaica's path to growth and development requires the urgent deployment of a national broadband network, which can no longer be delayed, and it is our fervent hope that our trading partners will respect our decisions and work with us to achieve our objectives.

The imposition of the universal service levy represents the exercise of our sovereign right to determine the nature, and funding of our universal service obligations. We are satisfied that the levy is neither discriminatory, nor in breach of our WTO commitments. The liberalization of the telecommunications industry has occurred ahead of our existing WTO commitments, and the only relevant commitment relates to national treatment, which is clearly not an issue as the levy applies to all locally licensed international carriers regardless of nationality.

The harsh reality is that Jamaica has not reaped the rewards of liberalization and the move to cost oriented prices, in one significant regard, namely; the declining settlements failed to stimulate an increase in demand sufficient to provide domestic carriers with the resources to fund reasonable network expansion, and/or universal service obligations.

The following table illustrates the development in the Jamaican telecommunications sector including general market data (number of lines and rates).

Table 1
TELEPHONE SUBSCRIBERS BY CATEGORIES (NUMBER OF LINES)

	2000	2001	2002	2003	2004
Land Lines	493,523	511,302	432,772	450,000	423,000
Mobile	249,842	640,453	1,187,295	1,600,000	1,687,000
Total Lines	743,365	1,150,755	1,620,067	2,050,000	2,110,000

Source - Various reports from telecommunications companies

*OUR's Estimates;

Notwithstanding the overall growth in our domestic network, there has been a net reduction in traffic volumes, which supports our contention that the declining settlement rates are not reflected in the retail rates for calls destined for Jamaica. Notably, the most recent data published by the FCC (for the year 2002) shows that international telephone calls averaged US\$ 0.28 per minute. The unofficial information available to us is that the average for 2004 is around US\$0.22. At the same time the data available for Jamaica for 2003 shows average retail charge per minute of US\$0.27. This in the face of declared average settlement rates for Jamaica for that year of US\$0.08. Notably, indications are that settlement rates and the average retail rates to US consumers are no longer moving in sync.

The most recent traffic data posted by the FCC for Jamaica. (see Table 2 below) belies the oft repeated claim that declining rates will lead to higher volumes and increased revenue:

Table 2
US Outbound Traffic to Jamaica

Year	Number of Lines in Jamaica	Outgoing Traffic million minutes	US Carrier Revenue US\$ Mn.	Average Rate per minute US\$	Average minutes per line	Per Line Revenue US\$
2000	739,067	289.3	166.8	0.58	391.41	225.68
2001	1,146,544	373.2	138.7	0.37	325.41	120.97
2002	1,696,521	524.0	168.0	0.32	255.61	81.95
2003	2,050,000	438.9	119.5	0.27	214.09	58.29

(Source: FCC Annual Report 43.61; International Traffic Data 2004)

Historically, international incoming traffic accounted for over 70% of the then monopoly operator's revenues. This was the source of the subsidies for universal service obligations, as well as for funding network expansion and development. The imposition of the levy recognizes that since liberalisation, both revenue and traffic volumes have fallen drastically, resulting in a severe impairment of the industry's ability to attract investment or fund universal service obligations. Additionally, the fact that existing universal service programs continue to be funded by the domestic services/consumers could not be ignored. Domestic telephone services have since 2003 been subject to a higher rate of consumption tax than other goods or services; this additional 5% tax was only recently reduced to 3.5% on May 1, 2005. International incoming telephone services were specifically exempt from taxation until now, which quite ironically brings to an end the discriminatory advantage which that service enjoyed without yielding a commensurate benefit.

The FCC has systematically worked to reverse the outflow of payments to foreign telecommunications administrations, to the complete detriment of these vulnerable administrations which cannot respond with strength to hostile action from large, wealthy corporations with multiple sources of revenue. Domestic operators complain that they are forced to accept foreign contracts which deliberately exclude references to local laws, and seek to deny those operators the right to obey the laws of their country. US carriers persistently refuse to pay increased rates, and hold domestic operators hostage, secure in the knowledge that their limited cash flow cannot sustain them in a prolonged siege.

The increased investment in the deployment of 3 cellular phone networks, and several other domestic data and voice networks, has resulted in increased importation of equipment, software, and professional services from North America. While our revenues decline, we continue to support US manufacturers and equipment vendors at consistently increasing levels.

I appreciate the interest that you have taken in our local industry, and your willingness to participate in a process that is extra-jurisdictional, and therefore cannot bind your companies. I am sure that a way can be found to establish dialogue and cooperation, so that inaccurate information or mistaken perceptions can be corrected. I understand from my representative at the recent meeting in Washington that the opportunity for such dialogue exists, and every effort will be made to ensure that such opportunities are not missed in the future.

The consultation documents and recommendations by the OUR are all published on their website, and the levy itself was the subject of a highly publicised Application for Reconsideration by three domestic network operators. The public – both local and international – has had every opportunity to inform itself on the process, and to participate.

It is our intention to monitor the industry very closely in the coming weeks in order to respond expeditiously to any need for revision, modification, or regulatory intervention. I have assured the carriers, who must now manage the implementation of the order, that they have my unqualified support for any legitimate action that must be taken in compliance with the order. They have specifically expressed concern that bilateral agreements for the exchange of traffic may be interrupted if new rates cannot be agreed with their trading partners. The Ministry will be undertaking a public awareness campaign to ensure that any inconvenience resulting from such interruptions of service will be understood in the proper context, by all Jamaicans.

Please bear in mind that any carrier who fails to comply with the Order is subject to suspension or termination of their licence, and the carriers are required to file reports with the regulator that will enable us to respond expeditiously to allegations of breach or non-compliance. It is therefore likely that carriers who fail to secure rate changes before June 1, 2005 will block the international circuits in order to ensure that their licences are not placed at risk.

Although I am unable to accede to your request on this occasion, I remain willing and available to consider appropriate alternatives that will improve the efficiency, transparency, and proportionate distribution of this unavoidable burden.

Sincerely,



Phillip Paulwell
Minister

ANNEX TO MINISTERIAL ORDER

(Issued by the Minister of Commerce, Science & Technology pursuant to Sections 38 & 39 of the Telecommunications Act 2000)

WHEREAS by Recommendation Document No: TEL. 2004/07 the Office of Utilities Regulation ("OUR") made its recommendations on universal service to the Minister in accordance with the duties imposed on the OUR by the provisions of sections 4(1)(g) and 39 of the Act; in response to which recommendation the Minister applied the principle set out in section 39(2)(d) of the Act to determine the basis for the provision of universal service; and imposed a levy for the purpose of funding the provision of the universal service obligation so determined.

WHEREAS the imposition of the said levy resulted in an Application for Reconsideration by three Domestic Network Operators, with expressions of support from various members of the Association of Competitive Carriers; which Application was heard by the Honourable Minister.

WHEREAS in the process of reconsidering his earlier decision, the Minister held further consultations with the OUR, the three Applicants, various other stakeholders and interested parties, and representatives of the Association for Competitive Carriers; additionally, written and oral submissions were made by and on behalf of the Applicants.

AND WHEREAS: pursuant to the powers conferred by the Act, and recognizing the merits of the matters raised in the further submissions and consultations; and further recognizing the urgency of the need to bridge the digital divide through the implementation of the Cabinet approved Universal Service plan; the Minister and the three Applicants agreed to resolve the issues raised in the Application for Reconsideration on the terms set out in this Annex, and to continue the process of consultation and co-operation so as to ensure the efficient, transparent, and non-discriminatory administration of the universal service fund, and implementation of the universal service plan.

TERMS:

1. The within Order, ("the Order") effective June 1, 2005, by virtue of which the Universal Service Levy is imposed, together with this Annex, will be incorporated into and form the basis of the operating mandate for the administrator of the universal service fund.
2. The fund shall be administered by a wholly owned Government subsidiary under the management of the Spectrum Management Authority, and the administrative and operational framework shall be implemented on or before June 1, 2005. Subject to this framework being in place in accordance with the Telecommunications Act, carriers shall commence collection of the levy and make timely payments to the Universal Service Fund Collection Agency & Administrator.

3. The Board of Directors of the Fund Administrator shall include two representatives, jointly nominated by the Domestic Network Operators, and management of the affairs of the company shall be accomplished through the use of Board-appointed sub-committees. The membership of such sub-committees shall be open to representatives of the contributors of the Fund, in unlimited but reasonable numbers.
4. Failure by any Licensee to make the requisite Universal Service Contributions shall be deemed to be a breach of the Licences issued under the Telecommunications Act 2000. As provided for in the Order, this Annex sets out the Approved Procedure for the suspension of termination services in the event of non-payment, or disputes regarding payment of the levy.
5. Approved Procedure for Suspension of Termination Services in the event of disputes, and non-payment: The Approved Procedure may be used by Terminating Carriers for the purpose of suspending termination services in the event of disputes as to the amount, or calculation of the levy. The terminating carrier shall notify the relevant carrier-in-default that the appropriate levy payment has not been paid in a given month ("Notification of Default"). If the carrier-in-default disagrees it will give written notice to the terminating carrier of the undisputed amount and make payment in respect of such amount within 24 hours of Notification of Default. If the carrier-in-default fails to make such undisputed payments the terminating carrier will be entitled to suspend termination services within 48 hours of delivery of the Notification of Default. The carrier's right to withhold payment of any portion of the levy due in respect of a given month shall be limited to disputed amounts which equal or exceed five percent (5%) of the total levy due for that period pursuant to the following terms and conditions:
 - (i) the traffic volumes and consequent amount in dispute must be asserted in good faith;
 - (ii) the carrier-in-default and the terminating carrier must provide each other with a written statement of the disputed traffic volumes and times and the disputed amount of the levy within ten (10) days of receipt of the invoice for the month in respect of which the levy was due. Further supporting documentation must be provided by either party to the other on reasonable request within a further five (5) days;
 - (iii) a dispute notification shall not relieve a carrier of its obligation to make levy payments due and owing within thirty (30) days of the end of the month in respect of which it is due if it is less than 5% of the total levy. If a carrier withholds an amount which is less than 5% of the total levy due on the disputed invoice, the terminating carrier may suspend termination services within 48 hours of delivery of the Notification of Default as aforesaid;
 - (iv) the parties shall exercise reasonable and good faith efforts to resolve disputed volumes and therefore the levy payments are due within twenty five (25) days of commencement of the dispute. If the parties are unable to resolve the dispute within this time, they may, by mutual agreement, choose to extend the dispute resolution period by

another seven (7) days. If the parties do not choose to extend the dispute resolution period or at the expiration of the additional seven (7) day period, the dispute shall be referred to binding arbitration. Arbitration shall be governed by the rules of the International Chamber of Commerce.

The purpose of the arbitration shall be to determine the relevant traffic volumes and times and consequently the levy due. The carrier shall pay the levy due based on the outcome of the arbitration within seven (7) days. Failure to make such payment shall entitle the terminating carrier to cease providing termination services to the carrier immediately thereafter.

In the event that a Terminating Carrier suspends termination services to a carrier it shall within three (3) days notify the OUR, Minister, the Fund administrator, and other Terminating Carriers. The OUR will then commence proceedings under section 14 of the Telecommunications Act 2000 to determine whether or not there are grounds for a recommendation to the Minister that the licence(s) of the carrier in question should be suspended or revoked. The existence of the Approved Procedure in no way constitutes a waiver of a Terminating Carrier's contractual rights.

6. In the event of non-payment of the Levy, (and in the absence of a dispute under clause 5 above), the following procedure shall apply:

(a) Terminating Carriers shall submit to the Ministry of Commerce, Science and Technology (the Ministry) and the OUR a list of parties currently terminating traffic on their domestic PLMN and/or PSTN networks as well as evidence of the prevailing billing and payment terms in accordance with interconnection or other agreements, no later than the 28th day of May, 2005. Thereafter, Terminating Carriers shall update this list as new carriers commence termination of international incoming traffic.

(b) Within forty-eight (48) hours of the contracted final due date for payment, a Terminating Carrier shall, by virtue of a Notice of Non-payment (the Notice) which shall include traffic reports and other relevant information which validates the amount of the levy, inform the OUR of a carrier's failure to pay the levy. This notice of non-payment shall be copied to the Minister and the defaulting carrier (notice to be served in accordance with the existing contractual provisions).

(c) Without prejudice to clause 6(e) and 6(f), and particularly in the event of non-compliance with the provisions of those clauses, the Terminating Carrier may suspend International Terminating Services to the defaulting carrier on the expiration of 48 hours after service of the Notice.

(d) Following receipt of the Notice of non-payment the OUR shall immediately commence investigations in accordance with section 14(6) and (7) of the Telecommunications Act 2000 and request that the defaulting carrier shall within twenty-four hours of deemed receipt, give reasons in writing for its failure to pay

the levy. The OUR shall review the reasons; If it is not satisfied with the reasons, the OUR shall recommend to the Minister, the immediate suspension or revocation of the Defaulting Carrier's licence;

(e) Where the Minister accepts the OUR's recommendation for the termination of a Defaulting Carrier's licence the Minister shall serve a Notice of Suspension/Termination of licence, which shall be copied to the OUR and all Terminating Carriers.

(f) Terminating Carriers shall forthwith cease the provision of all Incoming International Call termination services to a Defaulting Carrier upon receipt of the Notice of Suspension/Termination of Licence.


(g) For the avoidance of doubt the failure of a defaulting carrier to give reasons, in writing within the stipulated timeframe shall be grounds for the OUR to recommend to the Minister that a licence be suspended or terminated. Following receipt of the OUR's recommendation if the Minister is satisfied that the levy remains unpaid; he may order the immediate suspension and/or termination of the defaulting carrier's licence.

(h) Upon receipt of a recommendation from the OUR pursuant to this clause the Minister shall act in accordance with the provisions in clause 6(g) above.

(i) Terminating Carriers shall include the levy as a separate line item in the invoices issued under their Interconnection Agreements.

7. Audit and Disclosure: The Company shall publish interim unaudited accounts on a quarterly basis, in addition to its compliance with the audit and disclosure procedures applicable to public companies.
8. Pre-Incorporation Agreements: The matters set out in this Annex shall constitute a valid and enforceable pre-incorporation agreement, which shall be adopted by the first meeting of the Board of Directors of the company.

DATED THIS DAY OF , 2005


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HON. PHILLIP PAULWELL
MINISTER OF COMMERCE, SCIENCE & TECHNOLOGY;
With Energy.